

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 CAB-05 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 IO-14
AF-10 ARA-14 EA-12 NEA-10 CEQ-01 SS-15 NSC-05
PA-02 ICA-20 (ISO) W

-----036911 240157Z /62

R 212045Z APR 78

FM AMCONSUL MONTREAL

TO SECSTATE WASHDC 351

UNCLAS MONTREAL 774

FROM USREP DOWNS/ICAO FOR ONSTAD/FAA, WILLIS/STATE, BAKES/CAB

E.O. 11652: N/A

TAGS: PORC, EAIR, ICAO

SUBJ: ICAO LEGAL SUBCOMMITTEE ON NOISE AND SONIC BOOM - FIRST REPORT

1. UK AS TEMPORARY PRESIDING CHAIRMAN SUGGESTED THREE STATES TANZANIA, INDONESIA AND BRAZIL, PARTICIPATING AS OBSERVERS, BE MADE MEMBERS OF THE SUBCOMMITTEE. KAUNDA OF TANZANIA THEN SELECTED AS SUBCOMMITTEE CHAIRMAN. INCLUDING THESE THREE DELEGATIONS, THE MEETING IS ATTENDED BY TWENTH TWO STATES AS WELL AS THREE INTERNATIONAL ORGANIZATIONS (IATA, AACC (AIRPORT OPERATORS) AND ILA (INTERNATIONAL LAW ASSOCIATION).

2. THE FIRST TWO DAYS OF THE MEETING WERE DEVOTED TO OPENING STATEMENTS. IATA PROPOSED A PLAN WHICH WOULD CHANNEL ALL CLAIMS THROUGH THE AIRPORT OPERATOR. THE AIRPORT OPERATOR WOULD HAVE A DEFENSE THAT OPERATIONS WERE CONDUCTED "SUBSTANTIALLY IN ACCORDANCE WITH RELEVANT AIR TRAFFIC REGULATIONS." AIRPORT OPERATORS WOULD HAVE A RIGHT OF RECOURSE AGAINST AIRCRAFT OPERATORS CAUSING THE DAMAGE BUT WOULD BE REQUIRED TO PROVE THAT AIRCRAFT OPERATOR WAS "SUBSTANTIALLY IN BREACH OF RELEVANT AIR TRAFFIC REGULATIONS." NO ACTION COULD BE BROUGHT FOR NOISE EXCEPT AS EXPRESSLY PROVIDED IN THE CONVENTION. A CONSULTATION PROCEDURE WOULD BE SET UP TO

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REVIEW NOISE REGULATIONS ADOPTED BY A STATE. THE PROPOSAL WAS CRITICIZED BY SEVERAL DELEGATIONS, AND SHARPLY OPPOSED BY THE AIRPORT OPERATORS. NORWAY PROPOSED STRICT LIABILITY FOR NOISE ON THE PART OF BOTH THE AIRPORT AND AIRCRAFT OPERATOR

SENEGAL, ARGENTINA, POLAND, FRANCE AND UK URGED THAT THE SUBCOMMITTEE PROCEED RAPIDLY TO THE DRAFTING OF A TEXT.

3. THE UK PROPOSED A DEFENSE TO THE LIABILITY OF AN AIRCRAFT OPERATOR IF IT WAS IN COMPLIANCE WITH RELEVANT REGULATIONS. AIRPORT OPERATOR LIABILITY WOULD BE LEFT TO NATIONAL LAW. ADDED, AIRCRAFT OPERATOR WOULD

HAVE DEFENSE ONLY IF RECIPROCAL PROTECTION GRANTED BY CARRIER'S GOVERNMENT (I.E., A PARTY TO THE NEW CONVENTION).

4. JAPAN, CANADA AND US URGED THAT DRAFTING OF A CONVENTION WOULD BE PREMATURE. JAPAN SUGGESTED PERHAPS ONLY IMPACT (SINGLE EVENT) DAMAGE

BE COVERED BY THE CONVENTION WITH CUMULATIVE DAMAGE LEFT TO NATIONAL LAW.

5. US STATEMENT EMPHASIZED COMPLEXITY, DEVELOPMENT OF THE LAW, AND NEED TO LEAVE LIABILITY QUESTIONS TO NATIONAL LAW. THERE WAS NO SHOWING THAT A CONVENTION WOULD BE APPROPRIATE AT THIS TIME. THEREFORE US STATED WOULD HAVE TO RESERVE ITS POSITION ON ALL QUESTIONS OF SUBSTANCE, BUT WOULD ATTEMPT TO PARTICIPATE CONSTRUCTIVELY.

6. AFTER OPENING STATEMENTS SUBCOMMITTEE DECIDED TO CONSIDER PRINCIPLES IN PREPARATION FOR DRAFTING OF TEXT, ON BASIS OF AN OUTLINE OF QUESTIONS PREPARED BY TANZANIA AND CHILE. AT THE END OF THURSDAY'S SESSION SUBCOMMITTEE HAD DECIDED: (A) TO EXCLUDE MILITARY, CUSTOMS OR POLICE AIRCRAFT (SEE ART. 26 OF ROME.)
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(B) TO LIMIT TO DAMAGE CAUSED BY FOREIGN AIRCRAFT WITH A PROVISION FOR LEASED AIRCRAFT.

(C) TO EXCLUDE THE AIRPORT OPERATOR FROM COVERAGE BY THE CONVENTION, WITH A RECOGNITION THAT NATIONAL LAW WOULD APPLY, AND THAT CONVENTION WOULD NOT PRECLUDE AIRPORT OPERATOR FROM SEEKING CONTRACT INDEMNIFICATION FROM AIRCRAFT OPERATOR.

7. THURSDAY'S SESSION ENDED WITH DISCUSSION OF SYSTEM OF LIABILITY. NORWAY AND GERMANY PROPOSED STRICT LIABILITY OF AIRCRAFT OPERATOR FOR NOISE DAMAGE, IRRESPECTIVE OF WHETHER IN COMPLIANCE WITH RELEVANT REGULATIONS. OTHERS, PARTICULARLY UK, WOULD PROVIDE EXONERATION IF IN COMPLIANCE WITH RELEVANT REGULATIONS.

8. APPEARS WILL BE A STRONG EFFORT TO DEVELOP A TEXT OR ALTERNATIVE TEXTS AT THIS SESSION, IN ACCORDANCE WITH TERMS OF REFERENCE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, NOISE POLLUTION, SONIC BOOM, MEETING REPORTS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978MONTRE00774
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780173-1233
Format: TEL
From: MONTREAL
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780431/aaaaazyi.tel
Line Count: 110
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8117efa9-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2893063
Secure: OPEN
Status: NATIVE
Subject: ICAO LEGAL SUBCOMMITTEE ON NOISE AND SONIC BOOM - FIRST REPORT
TAGS: PORG, EAIR, ICAO
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/8117efa9-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014